

**Sec. 29-1. Purpose.**

The purpose of these regulations is to acknowledge and achieve the following:

- (1) There is a substantial governmental interest in promoting the public health, safety, welfare and convenience by ensuring that persons may reasonably use the public streets, sidewalks, rights-of-way, and other public property without interference with such use.
- (2) Newsracks placed and maintained on the streets, sidewalks, or other public rights-of-way, absent some reasonable regulation, may unreasonably interfere with the use of such streets, sidewalks, and public rights-of-way, and may present hazards to persons or property.
- (3) The streets, sidewalks and public rights-of-way are historically associated with the sale and distribution of newspapers and other publications, and access to and use of these areas for such purposes is not to be denied except where such use unreasonably interferes with the use of these areas by pedestrians or traffic, or where such use presents a hazard to persons or property.
- (4) Reasonable accommodation of these competing interests can be achieved by adoption of this Title, which regulates the placement and maintenance of newsracks.
- (5) The public health, safety, welfare and convenience require that: interference with vehicular, bicycle, wheelchair or pedestrian traffic be avoided within the public rights-of-way and on commercial properties; obstruction of sight distance and views of traffic signs and street-crossing pedestrians be eliminated; damage done to sidewalks or streets be minimized and repaired; the good appearance of the public streets and grounds be maintained; trees and other landscaping be allowed to grow without disturbance; access to emergency and other public facilities be maintained; and ingress and egress from properties adjoining the public rights-of-way be protected.

- (6) The regulation of the sale or free distribution of newspapers and other publications dispensed in vending machines as set forth in this Title provides the least intrusive and burdensome means for ensuring that the purposes stated in this section are carried out while still providing ample opportunities for the distribution of news to the citizens of the city.

(Ord. No. 931, § 1, 7-28-98)

**Sec. 29-2. Definitions.**

[The following words, terms and phrases, as used in this chapter, shall have the meanings respectively ascribed to them in this section, unless the context clearly indicates otherwise:]

*Abandoned newsrack* is any newsrack which remains empty for ten (10) business days, except that a newsrack remaining empty due to labor strike or any temporary and extraordinary interruption of distribution or publication by the newspaper or other publication sold or distributed from that newsrack shall not be deemed abandoned.

*Newsrack* is any self-service or coin-operated box, container, storage unit, or other dispenser installed, used, or maintained for the display and sale or distribution without charge of newspapers, periodicals or other publications.

*Modular newsracks* are single newsracks containing separate provisions for two (2) or more different publications, where each kind has separate coin slots or merchandise receptacles or places where the publication is dispensed.

*Public right-of-way* includes the area and those areas dedicated to public use for public street purposes including but not limited to roadways, parkways, alleys and sidewalks.

*Roadway* is that portion of a public right-of-way improved, designed and ordinarily used for vehicular traffic including drainage gutters and curbs a minimum of six (6) inches in horizontal width.

*Sidewalk* is that portion of a public right-of-way provided for the exclusive use of pedestrians, including planting areas or park strips, between the public roadway and adjacent property lines.

*Temporary newsracks* include any newsracks maintained in the public right-of-way for a trial period of up to forty-five (45) days.

(Ord. No. 931, § 1, 7-28-98)

### **Sec. 29-3. Newsrack permit required.**

(a) The provisions of this chapter shall be the exclusive requirements for newsrack encroachments in the City of Belmont and preempt any other provisions in this Code.

(b) Prior to placement of any newsrack on, or partially within, the public right-of-way or on public property, a newsrack permit must be obtained from the director of community development, or his designee.

(c) There shall be no fee, bond or other charges for a newsrack permit or application.

(d) The newsrack permit application shall be submitted on forms provided by the community development department and shall state the name, address, and telephone number of those responsible for installation, use, and maintenance of the newsracks, and shall describe, with particularity, the type of rack and location(s) proposed for installation. A newsrack permit shall be issued within ten (10) working days if the type of newsrack and location(s) proposed meet the standards set forth in this chapter. The permits shall expire if not renewed within three (3) years of issuance. The city shall either issue a permit or obtain a court order to restrain unpermitted acts.

(e) If a newsrack permit is disapproved, in whole or in part, the director of community development shall notify the applicant promptly, explaining the reasons for denial of a newsrack permit. The applicant shall have ten (10) calendar days within which to appeal the decision to the city council in accordance with the appeals provisions of this Code.

(f) A person securing a newsrack permit may install and maintain additional newsracks by an amendment to the permit originally granted to that person. The rules and procedures of this section shall also apply to the review and approval of any such amendment.

(g) All persons who obtain a newsrack permit shall also obtain and display an identification/permit marker provided by the City of Belmont.

(h) Newsracks on private property do not require a newsrack permit but do require design review approval if they do not conform to the design standards herein.

(Ord. No. 931, § 1, 7-28-98)

### **Sec. 29-4. Design.**

(a) Each newsrack shall be a 49-16 or 100 style (as manufactured by "Sho-Rack") or KJ50/KJ55F (as manufactured by "K-Jack") or M-30/M-33 (as manufactured by "National Newsvend"). Additionally, "armorhood 80 style" racks and "Ganset" racks may be used. However, where there are more than five (5) nonmodular newsracks in any one location, modular style racks shall be required. Although not required, the city encourages the use of "federal brown" (as manufactured by "Sho-Rack") or "San Jose brown" (as manufactured by "K-Jack") panels. (This chapter is not intended to mandate the color of newsracks within the city.)

(b) The compartments of modular newsracks shall be placed in such a manner as to utilize no more than two (2) horizontal rows of six (6) compartments per row.

(c) No newsrack shall be installed in the public right-of-way that does not meet the approved newsrack dimensions of not more than fifty-four (54) inches high including the pedestal measured from the ground to the top surface of the newsrack, not more than two (2) feet deep and not more than thirty (30) inches wide.

(d) The design of a newsrack shall not create a danger to the persons using the newsrack in a reasonably foreseeable manner.

(e) Newsracks may be placed next to each other. However, no group of newsracks placed along a curb shall extend for a distance of more than sixteen (16) feet, and shall be no closer than four (4) feet to another group of newsracks along a curb. If sufficient space does not exist to accommodate all newsracks sought to be placed at one (1) location without violating the standards set forth in this chapter, the director of community

development shall give priority, on a historical first-come, first-served basis, to permit applicants as follows:

- (1) First priority, on a first-come, first-served basis, shall be given to daily publications (inclusive of their Saturday, Sunday or weekend editions whether or not published jointly with another newspaper) published at least five (5) times per week;
- (2) Second priority, on a first-come, first-served basis, shall be given to weekly publications;
- (3) Third priority, on a first-come, first-served basis, shall be given to publications published more than once but less than five (5) days per week;
- (4) Fourth priority, on a first-come, first-served basis, shall be given to biweekly publications (published less than once per week but more than once per month); and
- (5) Fifth priority, on a first-come, first-served basis, shall be given to monthly or less frequent publications.

(f) All newsracks shall be pedestal mounted and shall be permanently affixed to the ground, except as permitted under this chapter.

(g) The highest operable part of the coin slot, if provided for the newsrack, and all controls, dispensers and other operable components of newsracks shall not be greater than forty-eight (48) inches above the level of the adjacent pavement or sidewalk, nor lower than fifteen (15) inches above the level of the adjacent pavement or sidewalk.

(h) It is intended that the provisions of this chapter shall be consistent with accessibility standards of the Americans with Disabilities Act of 1990, Public Law, 101-336 and further amendments affecting the general safety and welfare of all citizens of Belmont and visitors in the city, and that it is the responsibility of the owner of each newsrack to comply with all such provisions.

(Ord. No. 931, § 1, 7-28-98)

#### **Sec. 29-5. Placement.**

(a) No person shall install, stock, use or maintain any newsrack which projects onto, into or over any part of the roadway of any public right-of-way, street, or which rests, wholly or in part, upon, along or over any portion of a roadway.

(b) No person shall install, use or maintain any newsrack which in whole or in part rests upon, in or over any sidewalk or parkway, when such installation, use or maintenance endangers the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other government use, or when such newsrack unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, including handicapped access, the ingress into or egress from any residence, place of business, or the use of poles, posts, traffic signs or signals, hydrants, postal service collection boxes or other objects permitted at or near said location.

(Ord. No. 931, § 1, 7-28-98)

#### **Sec. 29-6. Standards.**

(a) Any newsrack which in whole or in part rests upon, on or over any sidewalk or parkway, shall comply with the following standards:

- (1) Newsracks shall only be placed near a curb, adjacent to the wall of a building, or at the rear of a sidewalk. The back of newsracks placed near the curb shall be placed no less than eighteen (18) inches nor more than twenty-four (24) inches from the edge of the curb. The back of newsracks placed adjacent to the wall of a building shall be placed parallel to such wall and not more than six (6) inches from the wall. No newsrack shall be placed or maintained on a sidewalk or parkway opposite another newsrack or kiosk which distributes newspapers, periodicals or other publications only.
- (2) All newsracks shall be permanently affixed to the ground except as permitted under this chapter. All newsracks installed on a public sidewalk composed of a unit paver system shall be installed in such a manner as to refit unit pavers around the anchoring device. Newsracks shall not be chained or otherwise attached to a bus shelter, bench, street light, utility pole, or sign pole, to any other single or modular newsrack, or to any tree, shrub, or other plant, or situated upon any landscaped area.

- (3) Any single-unit newsrack which meets the requirement of this Ordinance may be permitted in any single location for a period of forty-five (45) days in order to determine the suitability of long-term newsrack locations. At least ten (10) business days prior to locating a temporary newsrack, a complete license application shall be submitted, including written notice of the particular location and date upon which the 45-day trial period will begin. Within ten (10) business days after expiration of the 45-day trial period, the person maintaining the newsrack shall either cause it to be removed or submit a written request to the community development director for a permit for a permanent newsrack location. Temporary newsracks shall be skirted and weighted down.
- (4) No newsrack shall be placed, installed, used or maintained:
- Within fifteen (15) feet of any marked or unmarked crosswalk as measured from the curb return;
  - Within five (5) feet of any fire hydrant, fire call box, police call box, or other emergency facility;
  - Within five (5) feet of any driveway;
  - Within five (5) feet of any bus bench;
  - Within five (5) feet of any red curb of a bus stop zone;
  - At any location where the clear space for the passage of pedestrians is reduced to less than forty-eight (48) inches;
  - In such a manner as to impede or interfere with the reasonable use of any commercial window display;
  - Within fifteen (15) feet of the curb return of any wheelchair curb ramp not in a marked crosswalk.

(Ord. No. 931, § 1, 7-28-98)

#### **Sec. 29-7. Blinder racks required.**

Any person, corporation, or business entity who displays, sells, or offers to sell any material

that is harmful to minors, as defined by Chapter 7.6 of the California Penal Code, in a public place, other than a public place from which minors are excluded, shall place devices commonly known as blinder racks in front of the material, so that the lower two-thirds ( $\frac{2}{3}$ ) of the material is not exposed to view. The definitions of Penal Code Chapter 7.6 are incorporated herein including the definition of "harmful matter" which includes the display of photographs or pictorial representations of acts of sodomy, oral copulation, sexual intercourse, masturbation, bestiality, or representation of an exposed penis in an erect and turgid state.

(Ord. No. 931, § 1, 7-28-98)

#### **Sec. 29-8. Maintenance.**

(a) Each newsrack shall be maintained in a neat and clean condition and in good repair at all times. For example, without limitation, the newsrack shall be reasonably free of dirt and grease, be reasonably free of chipped, faded, peeling or cracked paint, be reasonably free of rust and corrosion, have no broken or cracked plastic or glass parts, and have no broken structural parts. No signs, advertising, stickers or adhesive labels, other than city-issued identification/approval labels, unrelated to publications in the newsracks shall be displayed on newsracks.

(b) Abandoned newsracks may be removed by a designated city employee and may be disposed of if not claimed by the owner within thirty (30) days after the city has notified the owner in writing. Such notice shall state the code section violated, the length of time within which the violation must be cured, and the forum within which the owner may request a hearing.

(c) Each newsrack which requires the deposit of money to obtain the publication shall be equipped with a coin return mechanism to permit persons using the machine to secure a refund in the event they are unable to receive the publication paid for. The coin return mechanism shall be maintained in good working order.

(d) Every person maintaining a newsrack under the terms of this chapter shall have his or her name, current address, and telephone number (updated within ten (10) days of any changes)

affixed to it in a place where such information will be readily visible and shall include, with such identification, instructions on how to receive a refund in the event of coin return malfunctions.

(e) Upon the removal of a newsrack, the public right-of-way shall be returned to its original condition including but not limited to the refilling of holes and refitting of unit pavers removed for purposes of installing newsracks.  
(Ord. No. 931, § 1, 7-28-98)

#### **Sec. 29-9. Abatement of violation.**

(a) A newsrack in violation of this chapter may be removed by a designated employee of the City of Belmont if it is impossible to remedy the violation and said violation poses a danger to health and safety, pedestrians and vehicular traffic.

(b) Before any newsrack is removed, the owner shall be notified by posting the notice on the newsrack and mailing the notice to the address for such party stated on the newsrack permit or indicated on the newsrack. If the mailing address of the newsrack owner is not available, posting alone shall be sufficient. Both forms of notice shall give the owner ten (10) days to remedy the violation and/or contest removal and shall state the place to request a hearing to contest removal of the newsrack.

(c) Any person notified under section 29-9(b) may submit a written request for a hearing before the director of community development, which hearing shall be held not less than ten (10) business days after the request was made. The hearing shall be informal, but oral and written evidence may be given by both sides. Any action by the city with respect to the alleged violation shall be stayed pending the community development director's decision following the hearing, which decision shall be rendered no later than ten (10) business days after the hearing. The director of community development shall give written notice of all decisions within five (5) days.

(d) The city may remove a newsrack if the person responsible for such newsrack has (1) neither requested a hearing before the director of community development nor remedied the viola-

tion within ten (10) business days following date of notice of violation, or (2) failed to remedy the violation within ten (10) business days after receiving a copy of the written decision that the newsrack was installed or maintained in violation of this chapter, following a hearing as conducted pursuant to this section. Such person shall be notified of the removal. Removed newsracks shall be retained by the City and may be recovered by the responsible party for a period of at least thirty (30) business days following removal.

(e) Notwithstanding the provisions of subsection (a) above, prior notice of removal is not required where the newsrack poses a danger to pedestrians or vehicles, provided notice of the removal and opportunity to contest is given the owner within ten (10) days of the removal.

(f) Removed or impounded newsracks shall be retained and may be recovered by their owner within thirty (30) days of their removal. Newsracks removed or impounded by the City of Belmont shall be retained by the city. Newsracks which are not claimed within thirty (30) days shall be deemed permanently abandoned and shall be disposed of.

(g) The person responsible for such newsrack shall pay an impound fee covering the actual cost to the city of transporting and storing such newsrack.

(h) Abatement hereunder is a cumulative remedy and does not constitute a defense to citation proceedings which may be employed simultaneously pursuant to the general provisions of this Code.

(Ord. No. 931, § 1, 7-28-98)

#### **Sec. 29-10. Amortization requirements.**

Every newsrack on public property or on the public right-of-way which does not comply with the provisions of this chapter shall be removed or otherwise brought into conformance within six (6) months of the effective date of this chapter. Existing newsracks on private property shall constitute a nonconforming use.

(Ord. No. 931, § 1, 7-28-98)